

## AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 09/977,036

Filing Date: October 11, 2001

Title: AGRICULTURAL BAGGER WITH UPPER TUNNEL COMPACTION AND CHUTE AGITATION

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**REMARKS**

Applicant has carefully reviewed and considered the Non-Final Office Action mailed May 16, 2005, and the references cited therewith. Claim 40 is rewritten in independent form. New claims 49-51 were added (supported by paragraph 60 of the published application and prior claims 42-43). No new matter is added. Claims 1-7, 19-24, 27-35, and 37-49 are pending, and consideration of these claims is requested. **Please charge any required fees (including the \$100 for one additional independent claim and \$75 for three additional total claims) or credit overpayment to deposit account 502931.**

***Claim Rejections – 35 USC § 112***

In the May 16, 2005 Office Action's paragraph 5, claims 1-4, 19-24, 27-35, 37-43, 45, 46 and 48 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner asserts that there is no support for Applicant's language "during operation of the primary compression mechanism" added in the claims. Applicant respectfully traverses. The written-description support in the original application does not say the primary mechanism stops for operation of the secondary mechanism, so one of skill in the art would implicitly understand that the operation of the primary compression mechanism is not stopped during the short period when piston 901 is extended (i.e., during filling of the bag). Also, unlike Rasmussen which must stop its primary mechanism during the clean-out operation of its tunnel front wall extension, there is no need to stop the primary mechanism during operation of the secondary because of the wall that encloses the bottom of the piston in the present invention (see Fig. 9); therefore the written description supports the new claim language. It is improper for the Examiner to implicitly import this limitation from Rasmussen into the present invention; the present application neither says nor implies that the primary mechanism is stopped during operation of the secondary compression mechanism. Further, the section (paragraph 60 of the published application) cited by the Examiner indicates that some embodiments use only a one-second piston extension (as an example) followed by 9 seconds in a retracted position (the primary is clearly implicitly running the entire time), and one of skill in the art understands that it would be undesirable and nearly

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impossible to stop the primary compression rotor for such a short period of time since it is powered from a PTO shaft (see paragraph 6 "A rotor 130 having multiple teeth 131, and powered by a power-take-off (PTO) shaft 133 from the tractor that powers bagger 100"). The hypothetical posed by the Examiner does not hold up. Further, Figure 11 also supports operation of the rotary secondary compression mechanism during operation of the rotary primary compression mechanism. Accordingly, Applicants respectfully request reconsideration and that the rejection be withdrawn and the claims be allowed.

In the May 16, 2005 Office Action's paragraph 7: claims 1-4, 19-24, 27-35, 37-43, 45, 46 and 48 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses. Applicant respectfully submits that the Examiner's argument (that unsupported language makes the claim indefinite and thus is given no patentable weight) makes no sense. First, as explained above, the language is supported. Second, the limitation particularly points out and distinctly claims the subject matter, and thus clearly conveys to one of skill in the art the scope of the claim. Third, "patentable weight" is an argument to be used relative to whether or not the recited language (the limitation) should be considered to be limiting, not as to whether or not the claim particularly points out and distinctly claims the subject matter. See MPEP 1504.04(III):

"[T]he definiteness of the language employed must be analyzed – not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art." *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971). A claim may appear indefinite when read in a vacuum, but may be definite upon reviewing the application disclosure or prior art teachings.

One of skill in the art would understand the scope of the subject matter which applicant regards as the invention. Accordingly, Applicants respectfully request reconsideration and that the rejection be withdrawn and the claims be allowed.

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*Claim Rejections – 35 USC § 102*

In the May 16, 2005 Office Action's paragraph 9: Claims 19, 21, 22, 24, 27-35, 37, 38, 41, 45, 46 and 48 were rejected under 35 U.S.C. § 102(b) as being anticipated by RASMUSSEN et al. (U.S. 4,310,036). Applicant respectfully traverses. As noted in the prior response, Applicant cannot find in the applied reference, for example, "a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and substantially only toward an upper portion of the tunnel *cavity during operation of the primary compression mechanism*", as presently recited in claim 19 and incorporated in claims 21, 22, 24 and 38. RASMUSSEN provides a tunnel cleanout mechanism that pushes feed from the entire tunnel, rather than compressing feed in the upper tunnel so that more feed can be pushed there by the primary compression mechanism. Further, RASMUSSEN cannot operate their cleanout mechanism during operation of the primary compression mechanism, since feed would wedge behind the plate in its pushed-out position, preventing it from withdrawing, preventing feed from extruding into the bag, and defeating its purpose. Accordingly claims 19, 21, 22, 24, 27-35, 37, 38, 41, 45, 46 and 48 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

Further, regarding means-plus-function claims 33 and 37 and their dependent claims, the Examiner has failed to show a structure, material, or act in the cited reference that could provide the recited function of the present claims. The Rasmussen clean-out plate pushes the residual feed from the tunnel after the bag has been filled, and cannot be operated during filling of the bag as would be required to provide the function "displacing pressure within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior cavity during operation of the primary compression mechanism" of claim 33, not the "moving feed within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior cavity during operation of the primary compression mechanism" of claim 37. Accordingly claims 33 and 37 and their dependent claims appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

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***Claim Rejections – 35 USC § 103***

In the May 16, 2005 Office Action's paragraph 11: Claims 20 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over RASMUSSEN et al. (US 4,310,036) in view of GOAR (US 3,881,407). Applicant respectfully traverses. The Examiner merely repeats paragraph 5 of the prior office action (even referring still to a "paragraph 3" argument, which paragraph has moved in the current office action to paragraph 9) without any refutation of Applicants prior reply. Applicant's response of April 18, 2005 provided a full and complete argument relative to this rejection, and Applicant incorporates that argument by reference here.

Moreover, Applicant yet again traverses the apparent Official Notice taken in the Office Action mailed May, 14, 2004 at page 4, section 8, last paragraph. Pursuant to M.P.E.P. § 2144.03, Applicant previously twice respectfully requested a reference showing a secondary compression mechanism located on the exterior of the feed tunnel and extending into the feed tunnel *above the primary compression mechanism*, as recited in claim 20. GOAR does not provide this. Accordingly, pursuant to MPEP § 2144.03 Applicant respectfully repeats his request for the Examiner to provide a reference in support of the assertion of obviousness.

Accordingly, claims 20 and 23 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

In the May 16, 2005 Office Action's paragraph 12: Claims 39 and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over RASMUSSEN et al. (US 4,310,036). Applicant respectfully traverses. The Examiner merely repeats paragraph 6 of the prior office action (but now adding claim 42 here, and now correctly referring to paragraph 9) without any refutation of Applicants prior reply. Applicant's response of April 18, 2005 provided a full and complete argument relative to this rejection, and Applicant incorporates that argument by reference here. Applicant's refutation of the paragraph 112 rejection is presented above. Accordingly, claims 39 and 42 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

In the May 16, 2005 Office Action's paragraph 13: Claims 1-3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over RASMUSSEN et al. (US 4,310,036) in view of

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GOTH (US 6,379,086). Applicant respectfully traverses. Applicant respectfully traverses. The Examiner merely repeats paragraph 7 of the prior office action (but now correctly referring to paragraph 9) without any refutation of Applicants prior reply. Applicant's refutation of the paragraph 112 rejection is presented above. Applicant's response of April 18, 2005 provided a full and complete argument relative to this rejection, and Applicant incorporates that argument by reference here. Accordingly, claims 1-3 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

In the May 16, 2005 Office Action's paragraph 14: Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over RASMUSSEN et al. (US 4,310,036) in view of GOTH (US 6,379,086). Applicant respectfully traverses. The Examiner merely repeats paragraph 7 of the prior office action (but now correctly referring to paragraph 9) without any refutation of Applicants prior reply. Applicant's refutation of the paragraph 112 rejection is presented above. Applicant's response of April 18, 2005 provided a full and complete argument relative to this rejection, and Applicant incorporates that argument by reference here. Accordingly, claim 4 appears to be in condition for allowance, and reconsideration and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

***Allowable Subject matter***

In the May 16, 2005 Office Action's paragraph 16: The Examiner acknowledged that claims 5, 6, 7, 33, 44 and 47 are allowed. Applicant believes that if claim 47 is allowed, then the independent claim (33) upon which it depends should also have been allowed.

In the May 16, 2005 Office Action's paragraph 17: The Examiner acknowledged that claim 40 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, and to include all of the limitations of the base and any intervening claims. Applicant believes that he has provided an amendment that includes the limitations referred to be the Examiner, while removing the language "during operation of the primary compression mechanism" in order that the Examiner withdraw the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph.

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Conclusion

Applicant respectfully submits that pending 1-7, 19-24, 27-35, and 37-51 are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (952) 278-3501 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 502931.

Respectfully submitted,

PAUL R. WINGERT

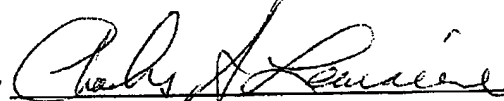
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Date

16 August 2005

By



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CERTIFICATE UNDER 37 C.F.R. 1.8: I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office, Fax No. 1-571-273-8300 on this 16th day of August, 2005.

  
Charles A. Lemaire